



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :

- against - :

Police Officer Henry Vidal :

Tax Registry No. 931378 :

Criminal Justice Bureau :

FINAL

ORDER

OF

DISMISSAL
-----X

Police Officer Henry Vidal, Tax Registry No. 931378, having been served with written notice, has been tried on written Charges and Specifications numbered 2017-18241, 2020-21874 and 2020 22576, as set forth on form P.D. 468-121, respectively dated March 2, 2018, March 9, 2020 and October 7, 2020 (last amended August 12, 2021), after a review of the entire record, Respondent is found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Henry Vidal from the Police Service of the City of New York.


KEECHANT L. SEWELL
POLICE COMMISSIONER

EFFECTIVE: 2/17/22

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POLICE DEPARTMENT

December 23, 2021

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In the Matter of the Charges and Specifications	:	Case Nos
- against -	:	2017-18241
Police Officer Henry Vidal	:	2020-21874
Tax Registry No. 931378	:	2020-22576
Criminal Justice Bureau	:	

-----X

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Kathryn Falasca & Kimberly Ferraro, Esqs.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2017-18241

1. Said Police Officer Henry Vidal, on or about October 30, 2016, while off-duty and within the confines of Bronx County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: Said Police Officer left the scene of a motor vehicle accident in which he had been involved without providing his license, vehicle and insurance information to the driver of the other vehicle involved in the accident, as provided for in Vehicle and Traffic Law Section 600(1)(a).

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

2. Said Police Officer Henry Vidal, on or about October 30, 2016, while off-duty and within the confines of Bronx County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: Said Police Officer failed to report a motor vehicle accident in which he was involved to the New York State Department of Motor Vehicles.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

Disciplinary Case No. 2020-21874

1. Said Police Officer Henry Vidal, assigned to Housing PSA 1, while off-duty, on or about March 6, 2020, within the confines of New York County, did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Henry Vidal did engage in a physical altercation with a person known to the Department.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT
PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Police Officer Henry Vidal, assigned to Housing PSA 1, while off-duty, on or about March 6, 2020, did consume intoxicants to the extent that he became unfit for duty.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

P.G. 203-04, Page 1, Paragraphs 1 & 2

FITNESS FOR DUTY

Disciplinary Case No. 2020-22576

1. Said Police Officer Henry Vidal, assigned to Housing PSA 1, while off-duty, on or about August 21, 2020, within the confines of New York County, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit:

said Police Officer Henry Vidal violated a valid order of protection issued in favor of a person known to the Department by communicating with said person.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

2. Said Police Officer Henry Vidal, assigned to Housing PSA 1, while off-duty, on or about August 21, 2020, having been directed by New York Police Sergeant Olga Peralta, to comply with a lawful order to report to a location regarding potential criminal activity, failed and neglected to immediately comply with said order.

P.G. 203-03, Page 1, Paragraph 2

COMPLIANCE WITH ORDERS

3. Said Police Officer Henry Vidal, assigned to Housing PSA 1, while off-duty, on or about August 21, 2020, engaged in order prejudicial to the good order, efficiency, or discipline of the Department, to wit: Said Police Officer Henry Vidal failed to remain on scene and failed to notify the Department of an off-duty domestic incident in which he was involved, resulting in his arrest. (*As added.*)

P.G. 203 10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT
OFF-DUTY INCIDENTS
INVOLVING UNIFORMED
MEMBER OF SERVICE

P.G. 212 32

4. Said Police Officer Henry Vidal, while assigned to Housing PSA 1, on or about March 1, 2021, impeded an official Department investigation by making false statements during his official Department interview. (*As added.*)

P.G. 203-08, Page 1, Paragraphs 1 & 4

FALSE OR MISLEADING
STATEMENTS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 3 and 16, 2021. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Police Officer Keith Lynch, Sergeant Sherlon Cromwell, Sergeant Yasmin Campusano, Sergeant Radhimir Jorge, Sergeant Edwin Cardona, Sergeant Olga Peralta, Sergeant Eduard Sandoval, and Lieutenant Louis Ellis as witnesses, and introduced into evidence

video footage from the two domestic violence related matters. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty of the charged misconduct, and recommend that he be DISMISSED from the New York City Police Department.

ANALYSIS

These cases involve incidents that occurred on three separate dates. In one matter, Respondent is charged with wrongfully engaging in a physical altercation with [REDACTED] ("the complainant") on March 6, 2020. Following that incident, a full stay-away order of protection was issued on behalf of the complainant. In a second matter, Respondent is accused of violating that order of protection on August 21, 2020. A third case, stemming from an unrelated incident that occurred back on October 13, 2016, charges Respondent with leaving the scene of a motor vehicle accident. The cases will be considered separately.

Disciplinary Case No. 2020-21874 (physical altercation)

It is alleged that on March 6, 2020, Respondent, while unfit for duty due to intoxication, wrongfully engaged in a physical altercation with the complainant inside the apartment where they were living together. The complainant did not appear to testify. Instead, the Department Advocate presented evidence of multiple statements the complainant made about the incident, including several interviews with various members of the service. It is well-settled that hearsay evidence is admissible in administrative proceedings, and may form the sole basis for a finding of fact. The hearsay, however, must be carefully evaluated to determine whether it is sufficiently

reliable. It is preferable to have testimony from live witnesses, where opposing counsel has the opportunity to cross examine, and the court can observe the witnesses' demeanors. In the absence of live testimony from the complainant here, this tribunal carefully considered her multiple prior statements.

Police Officer Keith Lynch testified that on March 6, 2020, he responded to a call of a current dispute at [REDACTED]. Upon arrival, Lynch observed Respondent banging on the door. Respondent appeared to be intoxicated, as he was slurring his speech, had bloodshot eyes, and alcohol on his breath. As the officer and his partner entered the apartment, Respondent tried to rush past them, but Lynch's partner pushed him back, while Lynch went to attend to a visibly shaken complainant. Since the complainant spoke mostly Spanish, Lynch was assisted by a Spanish-speaking officer who arrived at the scene. The complainant stated that Respondent came home drunk, barged through their bedroom door, and hit her. Specifically, he twisted her arm, which hurt her, and he kicked her in the ankle. Lynch observed that the complainant's ankle was visibly swollen, and that she was walking with a limp. (Tr. 35, 44-45, 49-51, 57, 80, 84, 90-92, 96-100, 110-11, 115)

When he realized that Respondent was going to be placed under arrest, Lynch activated his body worn camera ("BWC"). A copy of the BWC footage, which captures part of his interaction with the complainant, along with a translation, were introduced into evidence as Dept. Exs. 18 & 18A. Additionally, the complainant used her phone to record Respondent as he banged on her bedroom door before the door swung open; that brief footage, and an accompanying transcript of what was being said, were introduced as Dept. Exs. 19 & 19A.

The complainant was brought to the stationhouse, where Lynch prepared a Domestic Incident Report ("DIR"). In that report, the complainant wrote out a statement, in Spanish, of

what occurred. A copy of the DIR, accompanied by a translation, were admitted into evidence (Dept. Exs. 21 & 21A). In her statement, the complainant wrote that she was in bed when Respondent tried to enter the room “drunk and angry.” When she did not allow him entry, he broke the door, came towards her, grabbed her arm and started bending it while laughing. She got out of bed and as she went to exit the room, he started hitting her leg. She left the apartment and sought help from the super. (Dep’t Ex. 21 & 21A)

After being interviewed at the stationhouse, the complainant was transported to the hospital for treatment. Lynch took several photographs that appear to show swelling to the complainant’s ankle. (Dept. Exs. 20A-D; Tr. 67, 72-74)

Sergeant Sherlon Cromwell testified that he was the patrol supervisor on the date of the incident. When he arrived on the scene, he spoke with Respondent, who claimed that nothing had happened. According to Cromwell, Respondent appeared “pale, tired, a little intoxicated” – he had watery eyes, was incoherent in his speech, and had difficulty answering questions. Cromwell prepared a Fitness for Duty report (Dept. Ex. 23), in which he found Respondent unfit for duty. A second Fitness for Duty report (Dept. Ex 5), prepared by a captain, also found Respondent unfit. (Tr. 128-30, 133-36, 203)

Cromwell also spoke with the complainant, who was emotional and crying. She stated that Respondent had kicked her in the ankle, and Cromwell noticed that she was limping from a leg injury. However, in video footage from Cromwell’s BWC (Dept. Exs. 22 & 22A), which captures a conversation he had with his captain while still at the scene, Cromwell states that there were no visible injuries. Cromwell testified that he said that to the captain after a brief, preliminary conversation with the complainant, and that he went back and had a more extensive interview with her afterward. (Tr. 132, 145-46, 150-56, 158)

Sergeant Yasmin Campusano testified that she interviewed the complainant at the hospital on March 6, 2020. The complainant, who appeared nervous and scared, stated that she and Respondent had a verbal dispute about going out to dinner; the complainant chose not to go, because Respondent gets aggressive when he is drinking. Respondent went out by himself, and when he returned home he screamed at her through the locked bedroom door. Respondent kicked open the door, entered the room, grabbed and twisted the complainant's arm, and kicked her in the leg. She ran out to the building's super, and told him what had occurred. The complainant also texted Respondent's son, asking him to come pick up his father. Campusano recorded her conversation with the complainant. (Dept. Exs. 1 & 1A; Tr. 167-68, 174-76)

During the interview, the complainant showed Campusano text messages she had exchanged with Respondent's son, screenshots of which were introduced and translated as Dept. Exs. 2 & 2A. Specifically, the complainant texted Respondent's son, asking him to come to the apartment she shared with Respondent because Respondent was "very out of control" and had attacked her. The complainant also showed Campusano screenshots reflecting calls to her phone from Respondent. (Dept. Ex. 3; Tr. 176, 183-84)

Sergeant Radhimir Jorge of Housing Bureau Investigations testified that he was assigned to investigate this matter on March 10, 2020. He interviewed the complainant by phone that day, and she stated that Respondent had never mistreated her before this incident, and that she did not want to press charges against him. A recording of that interview, and the translation, were admitted into evidence as Dept. Exs. 4 & 4A. (Tr. 200-01, 285-86)

There were two 911 calls retrieved by Jorge. The first call (Dept. Exs. 6 & 6A) was made by the super, who requested a police response and stated that the complainant was crying and told him that Respondent, whom he referred to as "the drunk guy," had hit her. He also

noted that complainant told him that Respondent worked for the Police Department. The second 911 call (Dept. Exs. 7 & 7A) was made by a friend of the complainant, who stated that his friend was in an abusive relationship with an NYPD officer who was drunk and trying to enter their apartment. He described the complainant as afraid and crying. (Tr. 205-211, 292-99)

After reviewing the 911 calls, Jorge separately interviewed the two callers by phone, each of which was recorded. In his interview of the super on April 2, 2020 (Dept. Exs. 8 & 8A at 4-5, 10-11, 14), the super explained how the “hysterical” complainant arrived at his apartment, told him that her “husband” had been drinking and that he was violent, and she was afraid. He also recalled her stating that she had a bruise on her arm from him grabbing her hard. Two days later, he put up a latch on the complainant’s door at her request. During the interview with the complainant’s friend on April 17, 2020 (Dept. Exs. 9 & 9A), the friend stated that the complainant had called him late at night crying because Respondent was being “a little aggressive” and she was afraid. He recounted that she said something about Respondent putting his hand on her, but noted that he was not there and did not go into details with her because of the late hour. (Tr. 212-15, 218-19, 222-23, 299-306)

Respondent testified that he began a relationship with the complainant late in 2019, and they moved in together in February 2020. On March 6, 2020, they were inside their apartment arguing loudly about selecting travel dates that worked for each of their schedules. Respondent left the apartment, went to his son’s home, and had two drinks of scotch. He insisted that he was not drunk when he returned to his apartment about two hours later, and found the complainant inside the bedroom with the door closed. Respondent denied kicking in the bedroom door, claiming that the door lock was malfunctioning, and so he had to push the door hard in order to open it. Respondent also denied that he kicked the complainant in the ankle or grabbed her arm,

insisting that he had no physical contact with her. Regarding the injury to the complainant's ankle, Respondent stated that she had injured her ankle a day or two earlier, when she slipped on a wet floor at work; as such, her ankle already was swollen at the time of the incident. (Tr. 490-96, 528, 534-46, 553-58)

According to Respondent, the complainant told him to leave the apartment, which he did, going to the lobby of the building. Police officers arrived, and Respondent was arrested. Respondent admitted that he tried calling the complainant from the precinct, but there was no answer. The criminal charges against Respondent are still pending. (Tr. 510-11, 546-50, 560)

Specification I charges Respondent with wrongfully engaging in a physical altercation with the complainant. Specifically, it is alleged that Respondent forcibly twisted the complainant's arm, and kicked her in the ankle. On the one hand, counsel for Respondent correctly points out that since the complainant did not appear to testify at trial, counsel did not have the opportunity to cross-examine her about the details of what occurred. He argues that the hearsay statements in this matter are unreliable.

However, the credibility of the complainant's account was enhanced by the fact that she promptly and consistently related her allegations multiple times to different law enforcement personnel. Each of the members of service who testified about their interviews and interactions with the complainant were detailed and consistent in their testimony, and I credit their accounts.

When Officer Lynch arrived at the scene, he observed a "visibly shaken" complainant, who described for him what had transpired. She stated that Respondent had returned home drunk, barged through the door, twisted her arm, and kicked her in the ankle. Lynch observed that the complainant's ankle was swollen and that she was walking with a limp. He also took photographs (Dept. Exs. 20 A-D) that show bruising to the complainant's ankle and arm. At the

stationhouse, Lynch prepared a DIR (Dept. Ex. 21), in which the complainant, herself, wrote a statement in which she repeated how Respondent had hit her.

The account provided to Lynch was essentially reiterated several times in multiple interviews with other members of the service. Sergeant Cromwell, who also responded to the scene, described the complainant as emotional and crying, and walking with a limp. She informed him that Respondent had kicked her in the ankle. Sergeant Campusano spoke with the complainant at the hospital, where she told the sergeant that Respondent came home screaming, and he kicked her in the leg. She showed the sergeant text messages (Dept. Ex. 2) she had exchanged with Respondent's son, including one in which she asked the son to come to the apartment because Respondent was "very out of control" and had attacked her. Additionally, interviews with the two 911 callers confirmed that a crying complainant had promptly reached out to each of them to complain that Respondent had been physical with her.

Throughout multiple tellings, the complainant did not appear to be embellishing her account in order to cause trouble for Respondent; indeed, she stated to Sergeant Jorge that Respondent had never mistreated her before, and she did not want to press charges against him. Also, Respondent, himself, provided some corroboration of the complainant's account, as he admitted that he had been drinking and arguing with the complainant.

After carefully reviewing the totality of the evidence, I reject Respondent's testimony that he had no physical contact with the complainant, and that they were merely arguing. Indeed, if the interaction between Respondent and complainant amounted to nothing more than a verbal disagreement regarding their respective vacation schedules, it is highly unlikely that the complainant would have reacted the way she did: she ran to the super to call 911, texted Respondent's son that Respondent had attacked her, told multiple police officers, at the scene

and afterward, that Respondent had physically struck her, and repeated that allegation as part of the DIR that was prepared at the stationhouse.

As such, I credit the complainant's hearsay statements, in which she provided a consistent description of events, namely, that Respondent burst into their bedroom, twisted her arm, and kicked her in the ankle. The hearsay evidence was further corroborated by several officers, who observed swelling to her ankle, and memorialized it with photographs. The credible evidence has established that Respondent wrongfully engaged in a physical altercation with the complainant, and I find him Guilty of Specification 1.

Specification 2 charges Respondent with being unfit for duty due to intoxication. Section 203-04 of the Patrol Guide prohibits a member of the service from consuming intoxicants to the extent that the member becomes unfit for duty. Respondent acknowledged that he had two drinks of scotch before the incident with the complainant, though he claimed that he was not drunk.

However, in her statements to police officers and to the two 911 callers, the complainant repeatedly described Respondent as intoxicated. Police Officer Lynch convincingly testified that Respondent appeared to be intoxicated, as he was slurring his speech, had bloodshot eyes, and alcohol on his breath. Sergeant Cromwell, who also responded to the scene, reached the same conclusion, and found Respondent unfit for duty in his report (Dept. Ex. 23). An additional fitness for duty report (Dept. Ex. 25) prepared by a captain also concluded that Respondent was unfit. The record has established, by a preponderance of the credible evidence, that Respondent was unfit for duty, and I find him Guilty of Specification 2.

Disciplinary Case No. 2020-22576 (violating order of protection)

This matter involves an allegation that on August 21, 2020, Respondent violated a valid order of protection, requiring him to stay away from the complainant and to refrain from communicating with her. Since the complainant did not appear to testify, the Department Advocate instead relies upon statements made by the complainant to members of the service, as well as video footage showing Respondent walking with the complainant in the vicinity of the apartment of the complainant's sister.

Sergeant Olga Peralta of the 30 Precinct testified that on the afternoon of August 21, 2020, she responded to a call regarding a family dispute involving a member of service. She met with the complainant [REDACTED]. The complainant, who was crying and visibly scared, stated that Respondent followed her as she was walking to her sister's apartment. He followed her inside the building [REDACTED]. There was no answer at the [REDACTED], and Respondent tried to pull the complainant back toward the elevator. Peralta did not observe any visible marks on the complainant's arm. (Tr. 374, 377-79, 408)

While Peralta was still at the scene, the complainant received several calls on her phone from Respondent. The sergeant took the phone during one of the calls, identified herself to Respondent, and instructed him to return to the location; Respondent said okay, but he did not return. Peralta's time at the scene was captured by footage from her BWC (Dept. Exs. 24 & 24A). (Tr. 380-81, 396, 409)

Sergeant Eduard Sandoval of Patrol Borough Manhattan North Investigations testified that he interviewed the complainant by phone on August 21, 2020. She stated that she was afraid because Respondent had followed her from a hair salon, in violation of an order of protection.

He followed the complainant inside her sister's apartment building, grabbed her arm, and told her she had to go with him. The complainant told Respondent to leave her alone, and called 911. A recording of that interview, with an accompanying translation, were admitted into evidence as Dept. Exs. 25 & 25A. (Tr. 421-25)

Sergeant Jorge, who provided details as to his investigation into the March 6, 2020 incident, above, also testified regarding the alleged violation of the order of protection on August 21, 2020. The order of protection was issued to the complainant on March 6, 2020, in effect until September 5, 2020. It required Respondent to stay away from the complainant, to refrain from communicating with the complainant, and to refrain from assaulting or harassing the complainant. (Dept. Ex. 28)

As part of his investigation, Jorge retrieved video surveillance footage from the residence of the complainant's sister on August 21, 2020. In that footage (Dept. Ex. 15), Respondent can be seen following the complainant, who appears to be on her phone, inside the building, and taking the elevator up to the [REDACTED] floor. The two can then be seen returning to the first floor lobby area: the complainant is talking on her phone, and Respondent is following behind her. Respondent grabs for her elbow, and the complainant shoves Respondent away. Respondent continues to follow the complainant around the vestibule area, and she again shoves him away before exiting the building. The complainant waves her hand and hurries outside toward an RMP that has just pulled up in front of the building, as Respondent walks off. Additionally, earlier footage from two outside cameras shows Respondent following the complainant to the building (Dept. Exs. 16 & 17). (Tr. 248-278, 282-84)

Jorge also retrieved a recording of the complainant's 911 call (Dept. Exs. 10 & 10A). In that call, the complainant stated that she needed a police response to her sister's home because

her ex-boyfriend was present and threatening her. She noted that he had an open case, that he had “touched” her in the past and that he might be armed because he was a police officer. At one point toward the end of the call, as she is giving a description of Respondent, the complainant says, “Don’t touch me or I’ll scream.” Additionally, a copy of the DIR prepared in connection with this incident was admitted into evidence (Dept. Exs. 11 & 11A). In that report, the complainant stated that Respondent tried to grab her at the elevator, causing her to run. She further alleged that he threatened that her mother and her daughter would “pay for this.” (Tr. 226-29)

Further, phone records reflecting calls to and from Respondent’s phone were admitted as Dept. Ex. 12. The records show that there were more than 60 calls from Respondent to the complainant in August 2020, several of which were placed on August 21. Screenshots of the complainant’s phone, showing text messages sent from Respondent to the complainant from August 20 to 22, 2020, were admitted as Dept. Exs. 13 & 13A. In the text messages, Respondent tells the complainant he loves her, twice states, “I’m bad,” and references the damage he has done. The complainant replies that she is tired of his threats and will not put up with him anymore.

Lieutenant Louis Ellis, formerly with IAB, testified that he conducted an official Department interview with Respondent on March 1, 2021. A recording of that interview, and an accompanying transcript, were admitted into evidence (Dept. Exs. 26 & 26A). In that interview, Respondent repeatedly maintained that he was not following the complainant; rather, he went to a salon and then to the complainant’s sister’s apartment, hoping to meet with the sister regarding a business matter involving an apartment. He maintained he was merely “in close proximity” to the complainant. He denied threatening the complainant or acting aggressively toward her.

Respondent also was asked about the March 6, 2020 incident. He acknowledged having a verbal altercation with the complainant that day, but denied kicking or pushing open the bedroom door, and he insisted things “never got physical.” He specifically denied grabbing the complainant’s arm, and maintained that he never kicked her. (Dept. Ex. 26A at 11-12, 14-16, 25, 30-34, 38, 41, 51) (Tr. 440-43, 450-53)

Ellis did a follow-up interview with the complainant and her sister on June 23, 2021 (Dept. Exs. 27 & 27A). The complainant reiterated that Respondent had violated the order of protection by contacting, touching, harassing, and texting her. The sister stated that she did not have any business with Respondent on August 21, 2020. (Tr. 454-56, 459-61)

Respondent conceded that after he was arrested on March 6, 2020, he was issued an order of protection at his arraignment, which he read and signed, requiring him to stay away from the complainant. Respondent testified that on August 21, 2020, he was going to meet with the complainant’s sister to discuss using his name to help secure an apartment for the sister’s mother, since the sister did not have strong credit. They had arranged to meet at a barbershop, about a block-and-a-half from her apartment. When Respondent arrived, he did not see the sister, but the complainant was present inside talking with someone. The complainant exited the barbershop; rather than wait to see if the sister would arrive, Respondent left as well. Respondent decided to walk to the sister’s apartment building, which was where the complainant was walking as well. He insisted that he was not following her; they just happened to be walking in the same direction. (Tr. 496-505, 561-62, 567, 573-84)

Upon arrival at the sister’s building, Respondent and the complainant both went up to the [REDACTED], where Respondent believed the sister lived. Respondent denied threatening the complainant in any way. The complainant seemed upset, and exited the building. Respondent,

too, left the building, without knocking on the sister's door or calling her. (Tr. 505-06, 583-84, 589-94, 598)

Respondent testified that after leaving the location, he went to his son's home. He called the sister on her cell phone, and a sergeant from the NYPD came on the line; the sergeant instructed Respondent to return to the scene, but he did not do so. Instead, Respondent called his delegate, who advised him to speak with his attorney, after which Respondent surrendered himself at the Housing Investigations stationhouse. (Tr. 507-10, 595-97)

Specification 1 charges Respondent with violating the order of protection. It is undisputed that a valid order of protection was in effect at the time of the incident. Although it did not specifically prohibit Respondent from going to the home of the complainant's sister, it did require Respondent to stay away from the complainant, and prohibited him from communicating with her or harassing her in any way. The credible evidence has established that Respondent's conduct repeatedly ran afoul of that order on August 21, 2020.

On the date of the incident, the complainant called 911 from her sister's building, stating that Respondent was present and threatening her. According to Sergeant Peralta, who responded to the scene, the complainant was visibly scared, and stated that Respondent had followed her as she was walking to her sister's apartment. He followed her into the building, up to the [REDACTED] floor, and tried to grab her by the elevator. The complainant's statement was memorialized in a DIR prepared in connection with the incident, and she repeated her description of events to Sergeant Sandoval in a phone interview later the same day. Additionally, there was evidence of multiple phone calls and text messages sent from Respondent to the complainant around the time of the incident.

Respondent claims that he did not deliberately come in contact with the complainant; rather, he was intending to meet with the complainant's sister regarding a business matter, and just happened to be walking in the same direction as the complainant. However, Respondent often was evasive in his testimony, and his version of events was internally inconsistent and contradicted by the video footage in evidence. Respondent claimed that he was supposed to meet the complainant's sister to discuss using his name to secure an apartment for the complainant's mother. However, the sister oddly insisted that they meet at a barbershop instead of her home. Yet when Respondent arrived at the barbershop as per the supposed arrangement, he left almost immediately, rather than waiting to see if the sister would come, or even calling her to check on her status. Instead, he followed the complainant out the door, walked behind her toward the sister's building, and entered the building behind her.

Inside the building, Respondent never even bothered to knock on the sister's door for the supposed meeting, nor did he call her on the phone to see where she was. Instead, Respondent abruptly turned around and followed the complainant back down to the lobby of the building. The video footage from the lobby area shows that as the complainant is talking on the phone, Respondent reaches for her elbow, prompting the complainant to shove him away. Rather than leave at that point, Respondent continues to follow the complainant around the lobby, until she again has to shove him away, before she exits the building and hurries toward an RMP that has arrived outside.

With his actions on August 21, 2020, Respondent plainly violated the full stay-away order of protection. Accordingly, I find him Guilty of Specification 1.

Specification 2 alleges that Respondent did not comply with an order by Sergeant Peralta to return to the scene, while Specification 3 charges Respondent with failing to remain on the

scene and failing to notify the Department regarding the off-duty incident with the complainant. Section 203-03(2) of the Patrol Guide requires police officers to obey lawful orders and instructions of supervisors. Section 212-32 states that an off-duty member of the service who is at an unusual police occurrence as a participant must remain at the scene and request the response of a patrol supervisor.

It is undisputed that Respondent did not remain at the apartment building after his interaction with the complainant, and that he did not notify the Department of the incident: Respondent acknowledged that he left, and the video footage shows him walking away. Respondent claims that he did not believe he had done anything that would require him to remain at the scene or call in a notification. However, as discussed above, the credible evidence has established that Respondent was a participant in a confrontation with the complainant inside the apartment building. His involvement in this dispute, at a time where there was a valid order of protection prohibiting any contact with the complainant, required Respondent to remain at the scene and request the response of a supervisor. This he failed to do, and I find him Guilty of Specification 3.

Additionally, after he left the location, Respondent was instructed, by phone, to return to the scene by Sergeant Peralta. Peralta credibly described her phone conversation with Respondent, during which she identified herself and told Respondent that he needed to come back to the location. Respondent agreed to do so, but he did not, in fact, return. Respondent acknowledged that he spoke with Peralta, and that he did not comply with her instruction. Instead, he called his delegate, who advised him to contact his attorney. Even though Respondent eventually surrendered himself at a stationhouse, that does not excuse his failure to

obey the lawful order of a supervising officer to return to the scene of the incident. Accordingly, I find Respondent Guilty of Specification 2.

Specification 4 charges Respondent with impeding the Department's investigation by making false statements at his official Department interview on March 1, 2021. An investigation is considered "impeded" when a member of service makes false, misleading, and/or inaccurate statements.

Here, Respondent repeatedly denied following the complainant on August 21, 2020; as discussed above, that claim was contradicted by the credible evidence, particularly the video footage, which plainly showed Respondent following the complainant into the building, and then confronting her in the lobby on the way out. Additionally, during the same Department interview, Respondent repeatedly stated that he did not have any physical contact with the complainant on March 6, 2020; that claim, too, was contrary to the credible evidence provided by the complainant, who in multiple interviews with different members of the service described how Respondent had twisted her arm and kicked her ankle, an account that was supported by visible evidence of her injuries.

These false statements by Respondent were material, in that they involved significant facts that were directly relevant and essential to the Department's investigation. The credible evidence has established that Respondent impeded the Department's investigation with his false statements, and I find him Guilty of Specification 4.

Disciplinary Case No. 2017-18241 (leaving the scene)

Sergeant Edwin Cardona testified that in November 2016, while assigned to IAB, he was tasked with investigating allegations that Respondent had left the scene of a car accident on

October 13, 2016, in the Bronx. Specifically, a [REDACTED] driven by Respondent had rear-ended another vehicle. According to Cardona, several witnesses stated that Respondent had left the location without exchanging his motorist information. One such witness followed Respondent as he drove off; the location to which Respondent drove was his home address. Cardona also testified that during an official Department interview, Respondent confirmed that he was driving the vehicle, which was registered to his brother, at the time of the accident, and that Respondent had admitted to leaving the scene. (Tr. 352-54, 363-64)

The individual on the scene who observed the incident, and followed Respondent as he drove off, called 911 to report what had occurred; a recording of that call, along with an accompanying transcript, were admitted into evidence as Dept. Exs. 29 & 29A. In that call, the individual described how the fire department had arrived on the scene and moved the vehicles involved to the right side of the road. When the firefighters turned around, Respondent “snuck back in the car and drove off.” (Dept. Ex. 29A at 2, 6)

Respondent testified that after he rear-ended the other vehicle, he offered to exchange information with the other motorist, but she declined, preferring that they each handle their own damage. Since there was no injury, he left the scene and drove home. Days later, Respondent was contacted by his brother’s insurance company regarding the incident. Respondent conceded that he did not file a report with the DMV; he claimed that since he did not have the other motorist’s information, there was no need to file a report. (Tr. 483-89, 522-26)

Specification 1 charges Respondent with leaving the scene of a motor vehicle accident without providing his driver’s license and insurance to the other motorist, in violation of Section 600 (1)(a) of the Vehicle and Traffic Law. Respondent acknowledged that he was the driver of

the [REDACTED], which was involved in the accident. He claimed, however, that it was the other motorist who refused to exchange information.

That claim, however, was contradicted by multiple witnesses at the scene of the accident. I credit Sergeant Cardona's testimony that several people stated that Respondent left the scene without exchanging his motorist information. One such witness, the 911 caller, described how Respondent "snuck back" to his vehicle and drove off. That witness then followed him to his home. The fact that the witness went to such lengths further supports the conclusion that Respondent did not remain at the scene as required. As such, I find Respondent Guilty of Specification 1.

Specification 2 charges Respondent with failing to report the accident to the DMV. Respondent acknowledged that he did not file a report; he claimed that the reason he did not do so was because he did not have the other motorist's information. However, as discussed regarding Specification 1, above, it was Respondent's act of leaving the scene that prevented the exchange of information with the other motorist. As such, I reject Respondent's explanation for his failure to notify DMV, and find him Guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on July 1, 2002, has been found guilty of all the charges against him. The most serious of those charges is that he wrongfully engaged in a physical altercation with his [REDACTED] and then violated the order of protection that was issued following that initial incident. The presumptive penalty for a physical act of domestic violence is 30 suspension days, dismissal probation, and counseling. However, the aggravated penalty allows for termination.

The Department Advocate recommends that Respondent's employment be terminated. Specifically, the Advocate describes Respondent's misconduct as "a gross deviation from the standards of conduct expected from members of service," and argues that due to the nature of the domestic offenses he committed, the aggravated penalty of termination is appropriate. Under the circumstances presented here, I agree with that recommendation.

The credible evidence established that on March 6, 2020, Respondent barged into the bedroom of his [REDACTED]. What started as a verbal argument quickly escalated into a dangerous physical altercation, as Respondent twisted the complainant's arm, and kicked her in the ankle, causing swelling. At the time, Respondent was intoxicated to the point where he was found unfit for duty. Further, this was not the first time Respondent has been found unfit for duty; he previously was disciplined in 2013 for being unfit while driving under the influence.

Respondent compounded the situation with the complainant several months later on August 21: in violation of a full stay-away order of protection, he pursued the complainant to her sister's apartment building and followed her inside, leading the complainant to call 911. As made clear in the video footage, the complainant had to shove Respondent away before hurrying outside to the police car that had just arrived. Making matters worse, Respondent left the scene, and disregarded a supervisor's order to return. He also made false statements about both

incidents at his official Department interview, contrary to the Department's expectation that all members of the service provide truthful and accurate information. It is of great concern that this was not the first time Respondent made false statements; in 2017, he was guilty of providing false statements to two sergeants regarding his failure to safeguard a prisoner.

Police officers are entrusted with the responsibility of protecting the public. Members of the service are required to maintain the standards established by the Department for their conduct, whether on or off duty. It is deeply troubling that Respondent's domestic violence arrest on March 6, and the order of protection issued to him, were not enough to deter him from committing additional misconduct toward the complainant; several months after physically attacking her, he blatantly violated the order of protection, with his texts and phone calls, and by brazenly following the complainant down the street and into an apartment building.

Respondent's egregious conduct in these matters evinces a disturbing pattern of unlawful behavior, and demonstrates that he cannot reliably be trusted to control his behavior in a way that is expected of a member of this Department. Taking into account the totality of the facts and circumstances in these matters, I recommend that Respondent be DISMISSED from the New York City Police Department.

APPROVED
FEB 17 2022
KEECHANT L. SEWELL
POLICE COMMISSIONER

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER HENRY VIDAL
TAX REGISTRY NO. 931378
DISCIPLINARY CASE NOS. 2017-18241, 2020-22576,
2020-21874

Respondent was appointed to the Department on July 1, 2002. On his three most recent annual performance evaluations, he received overall ratings of “Exceeds Expectations” for 2018 and 2020, and “Meets Standards” for 2019. He has been awarded three medals for Excellent Police Duty and one medal for Meritorious Police Duty.

In 2013, Respondent forfeited 31 pretrial suspension days, four (4) vacation days, agreed to cooperate with counseling, and was placed on dismissal probation after he pled Guilty to (i-ii) operating a motor vehicle while under the influence & impaired by an intoxicant, (iii) consuming an intoxicant to the extent that he was unfit for duty, (iv) refusing to submit to a breathalyzer test, and (v) possessing an unauthorized duplicate shield.

In 2017, Respondent forfeited 30 pretrial suspension days after he pled Guilty to (i) failing to safeguard a prisoner, resulting in the prisoner’s escape and (ii-iii) providing false statements to two sergeants about the incident that resulted in a mobilization delay.

In connection with the instant matters, Respondent was suspended from March 6, 2020, to April 5, 2020, and again from August 24, 2020, to September 22, 2020. He has also been on Level 2 Discipline Monitoring since April 2017.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials